

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Billings Properties LLC

CASE 41H-0967-R-2023
41H 125474-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 125474-00 appeared in the Basin 41H Decree with an issue remark from Department of Natural Resources and Conservation examination. The claim received no objections, counter objections or notices of intent to appear.

2. The issue remark states:

THIS CLAIM AND WATER RIGHT NO. 41H 44088-00 APPEAR TO BE
DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS
INVOLVED.

3. The claim was consolidated into case 41H-0967-R-2023 and a filing deadline was initially set for the Claimant to file evidence to resolve the issue remark or call the Water Court no later than May 1, 2023. The Order stated that if nothing was filed by the deadline the Master will conclude that Claimant agrees the claims are duplicate and claim 41H 125474-00 will be dismissed.

4. Nothing was submitted by Claimant as of the date of this Report.

CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

4. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

5. Claimant failed to provide any evidence that claims 41H 125474-00 and 41H 44088-00 are separate claims. Maps and documents attached to each respective Statement of Claim are identical. These facts combined with the lack of participation from Claimants are enough to justify a dismissal of the claim 41H 125474-00.

RECOMMENDATIONS

The changes recommended above should be adopted. A Post Decree Abstract of Water Right Claim is served with the Report to confirm that claim 41H 125474-00 has been dismissed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Billings Properties LLC
3000 King Ave W
Billings, MT 59102-6436

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 125474-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: BILLINGS PROPERTIES LLC
3000 KING AVE W
BILLINGS, MT 59102 6436

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.